No. 82-1947

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ERICH KOKER and BEATRICE E. KOKER,

APPELLANTS

VS

FREDERICK V. BETTS and JANE DOE BETTS, his wife, and their marital community, and SKEEL, McKELVY, HENKE, EVANSON & BETTS, Law Firm Of Frederick V. Betts,

APPELLEES

AND

KENNETH L. LeMASTER and JANE DOE LeMASTER, his wife, and their marital community, and SAFECO INSURANCE COMPANY OF AMERICA, and GENERAL INSURANCE COMPANY OF AMERICA, and FIRST NATIONAL INSURANCE COMPANY OF AMERICA.

APPELLEES

A-P-P-E-N-D-I-X

[redacted]

JURISDICTIONAL STATEMENT

ON APPEAL FROM THE COURT OF APPEALS
DIVISION I AND THE SUPREME COURT OF
THE STATE OF WASHINGTON

Beatrice E. Koker
Erich Koker
Pro Se

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APPENDIX "C"

DEF/RESPONDENT #1
Appeal . . . . . #9346-1-I
State Supreme Court 49006-6

DEF/RESPONDENT #2
Appeal . . . . . #8935-8-I
State Supreme Court 48900-9

CR 56
State Summary Judgment Rule - C-1 Thru C-20:

Prior Appeal Opinion . . . . C-21 Thru C-31:
And Explanation
Much Controversy Over
C-25 Which Is Now
Malpractice Def-One:

Court Of Appeals Ruling C-32 Thru C-42:
And Opinion Manifest Error
And Why:

Opinion For Def #1
Betts - A-8 Thru A-14:

Opinion For Def #2
LeMaster - B-8 Thru B-10:

Cases Believed To Sustain C-43 Thru C-59:
Jurisdiction Of The United
States Supreme Court - Set Forth

Constitutional And Statutory-C-60 Thru C-83
Provisions Involved

I do certify all xeroxing to be true copies.
Beatrice E. Koher

INDEX TO "C"
APPENDIX

CR 56 SUMMARY JUDGMENT STATE RULE

- - -QUOTING:- - -

A. INTRODUCTORY 1. In General

"Material questions of fact may not be properly resolved by summary judgment." Clarke V. Alstore Realty Corp (1974) 11 Wn App 942, 527 P 2d 698:

2. PURPOSE AND EFFECT OF RULE AND PROCEEDINGS THEREUNDER

"Function of summary judgment is to avoid useless trial, however, trial is not useless, but absolutely necessary, where there is genuine issue as to any material fact." Preston v Duncan (1960) 55 Wn 2d 678, 349 P 2d 605: Bates v Bowles White & Co (1960) 56 Wn 2d 374, 353 P 2d 663: Wheeler v Ronald Sewer Dist (1961) 58 Wn 2d 444, 364 P 2d 780: Reagan v Seattle (1969) 76 Wn 2d 501, 458 P 2d 12:

"Very object of motion for summary judgment is to separate what is formal or pretended in denial or averment from what is genuine and substantial, so that only latter may subject suitor to burden of trial." Preston v Duncan (1960) 55 Wn 2d 678, 349 P 2d 605:

QUOTING

"Summary judgment procedure is not catchpenny contrivance, to take unwary litigants into its toils, and deprive them of trial, it is a liberal measure, liberally designed for arriving at truth, and its purpose is not to cut litigants off from their right to trial by jury if they really have evidence which they will offer at trial, but it is to carefully test this point out, in advance of trial, by inquiring and determining whether such evidence exists." Preston v Duncan (1960) 55 Wn 2d 678, 349 P 2d 605:

"Purpose of summary judgment is to avoid useless trial." Lish v Dickey (1969) 1 Wn App 112, 459 P 2d 810: McGough v Edmonds (1969) 1 Wn App 164, 460 P 2d 302:

"While the procedure for summary judgment exists to prevent useless trials, a trial is not to be considered useless if there exists a genuine issue as to any material fact." Barovic v Cochran Electric Co. (1974) 11 Wn App 563, 524 P 2d 261:

3. NECESSITY OF, AND RIGHT TO, TRIAL

"Though summary judgment is proper and valuable instrument for preventing useless trials it should not be used where real doubt

QUOTING

exists as to decisive factual issues. Bartlett v Northern Pacific R. Co (1968) 74 Wn 2d 881, 447 P 2d 735:

B. APPLICATION FOR SUMMARY JUDGMENT AND SHOWING THEREON

4. IN GENERAL

"Party moving for summary judgment must establish that there is no genuine issue as to any material fact, and that undisputed facts require judgment in his favor." Sanders v Day (1970) 2 Wn App 393, 468 P 2d 452:

5. AFFIDAVITS

"Under provision of subd (e) requiring summary judgment affidavits to be made on personal knowledge, affidavit may present evidentiary facts by means of affiant's reference to sworn or certified statements of another person." Caldwell v Yellow Cab Service, Inc. (1970) 2 Wn App 588, 469 P 2d 218:

"Evidence in a summary judgment affidavit, which pursuant to CR 56(e) must be based upon the affiant's personal knowledge, may be presented by reference to other sworn state-

ments in the record such as depositions and other affidavits." Mostrom v Pettibon (1980) 25 Wn App 158, 607 P 2d 864:

6. SHOWING IN PLEADINGS

"While the party who moves for summary judgment bears the burden of showing that there is no genuine issue of material fact, once he has so done, the other party may not rely on his pleadings unsupported by evidentiary facts." State v Yard Birds, Inc. (1973) 9 Wn App 514, 513 P 2d 1030: (Emphasis Mine)

"In order to defeat a motion for summary judgment, once it is shown that no genuine issue of material fact exists, the nonmoving party must furnish factual evidence which establishes such a genuine issue, rather than merely asserting that unresolved issues remain." Bates v Grace United Methodist Church (1974) 12 Wn App 111, 529 P 2d 466: (Emphasis Mine)

7. BURDEN OF PROOF

"One who moves for summary judgment has burden of proving that there is no genuine issue of facts, irrespective of whether he or his opponent

would, at trial, have burden of proof on issue concerned." Preston v Duncan (1960) 55 Wn 2d 678, 349 P 2d 605: Reynolds v Kuhl (1961) 58 Wn 2d 313, 362 P 2d 589:

"Burden of proof is on party moving for summary judgment to prove by uncontroverted facts, that no genuine issue as to any material fact exists." Jolly v Fossum (1961) 59 Wn 2d 20, 365 P 2d 780:

"Burden is on party moving for summary judgment to establish absence of genuine issue as to material fact." Reed v Streib (1965) 65 Wn 2d 700, 399 P 2d 338:

"Party moving for summary judgment has burden of showing that there is no genuine issue of fact." Jorgensen v Massart (1963) 61 Wn 2d 491, 378 P 2d 941: Balise v Underwood (1963) 62 Wn 2d 195, 381 P 2d 966: Hudesman v Foley (1968) 73 Wn 2d 880, 441 P 2d 532: Regan v Seattle (1969) 76 Wn 2d 501, 458 P 2d 12: Lish v Dickey (1969) 1 Wn App 112, 459 P 2d 810:

Raabe v Coy (1970) 2 Wn App 161, 467 P 2d 326:

7. BURDEN OF PROOF (Cont'd)

"Burden is upon party moving for summary judgment to show that there is no genuine dispute of material fact and this burden cannot be shifted to adversary, irrespective of whether he or his opponent would at trial, have burden of proof on issue concerned."
American Universal Ins Co v Ranson
(1962) 59 Wn 2d 811, 370 P 2d 867:

"Party moving for summary judgment has burden of showing that there is no genuine issue of material fact on each theory of liability advanced by his adversary." McGough v Edmonds
(1969) 1 Wn App 164, 460 P 2d 302:

"Burden is on party moving for summary judgment to demonstrate absence of factual issue, and reasonable inferences from the evidence must be resolved against him."
Caldwell v Yellow Cab Service, Inc
(1970) 2 Wn App 588, 469 P 2d 218:

Please Note: APPENDIX A-37 Through A-40: F. V. Betts presentation did not meet burden of proof. APPENDIX B-15 Through B-18: Kenneth L. LeMaster presentation did not meet burden. Neither presented any evidence. Major portion both Appendix A and B from plaintiff B. Koker.

C. HEARING AND DETERMINATION

9. FUNCTION AND POWER OF COURT

"In ruling on motion for summary judgment, court's function is not to resolve any existing factual issue, but to determine whether such genuine issue exists." Jolly v Fossum (1961) 59 Wn 2d 20, 365 P 2d 780: Hughes v Chehalis School Dist (1962) 61 Wn 2d 222, 377 P 2d 642:

"In ruling on motion for summary judgment, court must consider all evidence and all reasonable inferences therefrom most favorable to nonmoving party, and ir there is genuine issue as to any material ract, summary judgment cannot be granted." Maki v Aluminum Bldg. Products (1968) 72 Wn 2d 23, 436 P 2d 186:

10. CONSIDERATION OF PLEADINGS, AFFIDAVITS AND EVIDENCE

"Court cannot resolve genuine issue of credibility, such as is raised by contradicting or impeaching evidence which is not too incredible to be believed by reasonable minds." Balise v Underwood (1963) 62 Wn 2d 195, 381 P 2d 966:

10. (cont'd)

"Trial court is not permitted to weigh evidence in ruling on motion for summary judgment, nor is it entitled to resolve any existing factual issues." Fleming v Smith (1964) 64 Wn 2d 181, 390 P 2d 990:

"In considering motion for summary judgment, court must review material submitted by both parties in light most favorable to nonmovant." Wise (Robert) Plumbing & Heating, Inc. v Alpine Development Co (1967) 72 Wn 2d 172, 432 P 2d 547:

"Credibility of witness should not ordinarily be determined on motion for summary judgment." Hudesman v Foley (1968) 73 Wn 2d 880, 441 P 2d 532:

"While all affidavits submitted in a summary judgment proceeding must conform to the requirements of statutes and, as nearly as possible, reflect that which the affiant would be permitted to testify to in court, affidavits presented by the nonmoving party are generally to be accorded some leniency in meeting these requirements." Morris v McNicol (1974) 83 Wn 2d 491, 519 P 2d 7:

11. ASSERTIONS TAKEN TO BE TRUE

"On motion for summary judgment, facts asserted by nonmoving party and supported by affidavits or other proper evidentiary material must be taken as true." State ex rel. Bond v State (1963) 62 Wn 2d 487, 383 P 2d 288:

"When pleading or affidavit is properly made andis uncontradicted, it may be taken as true for purposes of passing upon motion for summary judgment." Leland v Frogge (1967) 71 Wn 2d 197, 427 P 2d 724:

12. PRESUMPTIONS AND INFERENCES

"In ruling on motion for summary judgment court must view facts and all reasonable inferences therefrom, in light most favorable to nonmoving party." Gaines v Northern Pacific R. Co (1963) 62 Wn 2d 45, 380 P 2d 863:

"In determining whether there is issue of material fact for purposes of summary judgment, party against whom such judgment is sought is entitled to all favorable inferences that can be deduced from affidavits in the case." Meadows v Grant's Auto Brokers (1967) 71 Wn 2d 874:

12. Presumptions And Inferences (Cont'd)

"Material evidence and its inferences must be considered most favorably to nonmoving party in determining whether factual dispute exists." Balise v Underwood (1963) 62 Wn 2d 195, 381 P 2d 966:

"Burden is on party moving for summary judgment to demonstrate absence of genuine issue of material fact, and reasonable inferences from evidence must be resolved against him." Caldwell v Yellow Cab Service, Inc (1970) 2 Wn App 588, 469 P 2d 218:

b. GRANT OR DENIAL OF MOTION

13. IN GENERAL

"Under CR 56, a trial is mandatory when there is a genuine issue as to any material fact. A "material fact" is a fact upon which the outcome of the litigation depends, in a whole or in part." Barber v Bankers Life & Casualty Co (1972) 81 Wn 2d 140, 500 P 2d 88: (Emphasis Mine)

"Material facts, within meaning of this rule, are those on which outcome of litigation depends." Zedrick v Kosenski (1963) 62 Wn 2d 50, 380 P 2d 870:

14. WHEN SUMMARY JUDGMENT

PROPER OR REQUIRED

"Granting of motion for summary judgment is proper only where moving party is entitled to judgment as matter of law, where it is quite clear what truth is, and no genuine issue remains for trial." Burback v Bucher (1960) 56 Wn 2d 875, 355 P 2d 981:

16. WHEN SUMMARY JUDGMENT

IMPROPER OR NOT REQUIRED

"It is improper to enter summary judgment granting to one party remedy about which both parties are litigating as long as relevant issues of fact have not been decided." Lewis County Sav & Loan Assoc v Black (1962) 60 Wn 2d 362, 374 P 2d 157:

"So long as party who is deemed to have admitted making statement, on his failure to answer request for his admission as to having made statement, has, by pleading or affidavit denied truth of such statement, material issue as to fact contained in statement remains so as to prevent granting of summary judgment." Salvino v Aetna Life Ins Co (1964) 64 Wn 2d 795, 394 P 2d 366:

16. When Summary Judgment Improper Or Not Required (Cont'd)

"Summary judgment cannot be granted if there is dispute as to any issue of material fact, or if facts are not in dispute but reasonable minds might differ as to liability." Mathis v Swanson (1966) 68 Wn 2d 424, 413 P 2d 662:

"Motion for summary judgment must be denied even where evidentiary facts are undisputed if reasonable minds could draw different conclusions therefrom." Fleming v Stoddard Wendle Motor Co (1967) 70 Wn 2d 465, 423 P 2d 926:

"The reasonableness of a party's acts is a question of fact, and if it is a material issue in resolving litigation, the granting of a summary judgment is improper." Morris v McNicol (1974) 83 Wn 2d 491, 519 P 2d 7:

"Affirmance of the granting of summary judgment on grounds other than those relied upon by the trial court is premature in the absence of an opportunity to fully and fairly litigate those other grounds. In such an instance, the case should be remanded rather than affirmed (CR 56 (f)" Bernal v American Honda Motor Co, 87 Wn 2d 406, 553 P 2d 107:

17. PARTICULAR ACTIONS AND ISSUES

"Summary judgment is not warranted where, though evidentiary facts are not in dispute, different inferences may be drawn therefrom as to ultimate facts such as intent, knowledge, good faith, negligence, etc." Preston v Duncan (1960) 55 Wn 2d 678, 349 P 2d 605:

"Where defendant simply established that, unless plaintiff had testimony in addition to her own, she could not make case for jury, court should have denied motion for summary judgment, since moving party failed to sustain burden of proof." Preston v Duncan (1960) 55 Wn 2d 678, 349 P 2d 605:

26. SCOPE OF APPELLATE REVIEW AND DETERMINATION

"In reviewing a trial court's determination regarding a motion for summary judgment, an appellate court assumes the truth of the evidence presented by the nonmoving party and gives such party the benefit of all reasonable inferences from that evidence." Bates v Grace United Methodist Church (1974) 12 Wn App 111, 529 P 2d 466:

DECISIONS CONSTRUING SIMILAR FEDERAL RULE

A. INTRODUCTORY

1. IN GENERAL

"In absence of express statutory authorization, courts are extremely reluctant to allow proceedings more summary than full court trial at common law." New Hampshire Fire Ins Co v Scanlon (1960) 362 US 404, 4 L Ed 2d 826, 80 S Ct 843:

3. LIMITS, WHEN RULE INAPPLICABLE

"Rule relating to summary judgments should be cautiously invoked to end that parties, may always be afforded trial where there is bona fide dispute of facts between them." Associated Press, International News Service v United States (1944) 326 US 1, 89 L Ed 2013, 65 S Ct 1416, reh den 326 US 802, 90 L Ed 489, 66 S Ct 6:

"This rule does not serve as substitute for trial of case, nor require parties to dispose of litigation through use of affidavits." Smoot v Chicago, R. I. & P. R. CO (1967) Okla) 378 F 2d 879:

B. APPLICATION AND SHOWING FOR SUMMARY JUDGMENT

4. In General

"Burden is on party moving for summary judgment to demonstrate clearly that there is no genuine issue of fact, and any doubt as to existence of such issue is resolved against him." Phoenix Sav & Loan, Inc v Aetna Casualty & Surety Co (1967)(Md) 381 F 2d 245:

5. MOTIONS, AND CONTENTIONS AND CONCESSIONS THEREUNDER

"Movant seeking summary judgment may content that under his theory of the case no substantial issue of fact exists, while under adversary's theory factual questions are in issue." Cram v Sun Ins Office, Ltd (1967) (SC) 375 F 2d 670:

"In moving for summary judgment, defendant admits all facts that have been well pleaded by plaintiff." Gore v Northeast Airlines, Inc (1967) (NY) 373 F 2d 717:

6. AFFIDAVITS

"Provisions of subd (e) that adverse party "may not rest upon the mere allegations or denials of his pleadings", does not forbid use of affidavit contained in verified pleading to traverse affidavits opposing it." Khan v Garanzini (1969, Mich) 411 F 2d 210:

SEE: (FEDERAL RULES DIGEST THIRD EDITION CUMULATIVE SUPPLEMENT 56c.31 p 11:

Plaintiff's complaint is properly serving as affidavit in opposition to resist motion for summary judgment.)

8. PLEADINGS

"Sufficiency of allegations of complaint do not determine motion for summary judgment." Lindsey v Leavy (1945 Wash) 149 F 2d 899, cert den 326 US 783, 90 L Ed 474, 66 S Ct 331: Christianson v Gaines (1949, DC) 174 F 2d 534: Surkin v Charteris (1952, Fla) 197 F 2d 77:

C. GRANT OR DENIAL OF SUMMARY JUDGMENT

9. IN GENERAL

"Requirements governing summary judgments are to be strictly applied to insure that genuine factual issues will not be determined without benefit of trial." Frey v Frankel (1966, Kan) 361 F 2d 437:

10. COURT'S CONSIDERATION OF, AND DETERMINATION ON, MATTERS SHOWN

"Discretion plays no real role in grant of summary judgment." National Screen Service Corp v Poster Exchange, Inc. (1962, GA) 305 F 2d 647:

"Issue of material fact required by subd (e) to be present to entitle party opposing motion for summary judgment to proceed to trial, is not required to be resolved conclusively in favor of party asserting its existence, rather, all that is required is that sufficient evidence supporting claimed factual dispute be shown to require judge or jury to resolve parties' differing versions of the truth at trial."

(Cont'd)

10. Cont'd:

First National Bank v Cities Service Co (1968) 391 US 253, 20 L Ed 2d 569, 88 S Ct 1575:

"On motion for summary judgment, court should not attempt to reconstruct intent of parties in complicated factual situation thereby denying them opportunity to present evidence on that issue to trier of fact." Preston v United States Trust Co (1968, NY) 394 F 2d 456, cert den 393 US 1019, 21 L Ed 2d 563, 89 S Ct 624:

"Party moving for summary judgment has burden of showing absence of genuine issue as to any material fact, and to that end, material lodged by a moving party must be viewed in light most favorable to opposing party." Adickes v Kress (S. H.) & Co. (1970) 398 US 144, 26 L Ed 2d 142, 90 S Ct 1598:

11. WHEN SUMMARY JUDGMENT PROPER OR REQUIRED

"In order to grant party summary judgment, that party must be entitled to relief beyond all doubt, and without room for controversy." Williams v Chick (1967, Mo) 373 F 2d 330:

13. WHEN SUMMARY JUDGMENT IMPROPER OR NOT REQUIRED

"Denial of motion for summary judgment is appropriate when legal issues are of particular significance, or particularly complex, or can be intelligently resolved only on fully developed record." Grace (Anthony) & Sons, Inc v United States (1965, Ct Cl) 345 F 2d 808, revd on other grounds 384 US 424, 16 L Ed 2d 662, 86 S Ct 1539:

"While party is not entitled to denial of motion for summary judgment on basis of mere hope that evidence to support his claim will develop at trial, such judgment should be denied where it is highly probable that the evidence will develop at trial." Taylor v Rederi A/S Volo (1967, Pa) 374 F 2d 545:

"If opinion evidence is relevant, case is not one to be determined on motion for summary judgment." Elliott v Massachusetts Mut Life Ins Co (1968) (Ala) 388 F 2d 362:

14. PARTICULAR ISSUES

AND PROCEEDINGS

"Generally, negligence is not susceptible of summary adjudication, but should be resolved by trial in ordinary manner." Melton v Greyhound Corp (1965, Tex) 354 F 2d 970:

"Credibility of witness is factual issue precluding summary judgment." Cram v Sun Ins Office, Ltd (1967, SC) 375 F 2d 670:

D. APPEAL AND ERROR

18. REVIEW

"In considering motion for summary judgment, appellate court is required to examine record in light most favorable to party opposing motion." Frey v Frankel (1966, Kan) 361 F 2d 437:

19. APPELLATE DECISION AND

SUBSEQUENT PROCEEDINGS

"Appellate court is unwilling to sustain summary judgment where record is unclear on both fact and legal theory forming basis for trial court's ruling." Frey v Frankel (1966, Kan) 361 F 2d 437:

PRIOR APPEAL

The record shows designated issues on the prior appeal, inadequate damages and abuse of discretion by the court, and conduct of the defense attorney in 1976 trial vouching for credibility of witnesses, asking promises of the jury, insinuating questions, maligning, et al. This conduct is new issue in case at bar as specific examples of malpractice because my attorney then (Mr. Betts) did not protect his client Beatrice Koker by objections and rebuttal.

The case at bar is new issues, new parties, new subject matter. "A judgment does not bar a second action, based on new facts created by the first action, though both actions arise out of the same subject matter." 28 USCA Note 180 p 319 IV:

The following pages will show the prior appeal decision and opinion, and excerpts, and how it opened the door to tort.

EXCERPTS - PRIOR APPEAL OPINION COMMENTS
1976 Trial - Permanent Injuries 1978

The following opinion quotations are from the same Court of Appeals that rules $145,000. is an award "within the bounds of sensible thought for a drop foot injury." RYAN V WESTGARD 12 Wash App 500 (1975) 530 p 2d 687:

Beatrice Koker was awarded $4,600. for a proven drop foot injury, plus proven other injuries cervical and aggravation of pre-existing condition. Obviously inadequate. "WHY?" and the discovery and proof and the responsibility and liability and the damages to person and property and the manifest harm is the basis of the case at bar plus other.

Appeal #4916-I 1978
Court Of Appeals
Opinion - Door to Tort

Page 1 and 2: "Erich and Beatrice Koker, husband and wife, appeal from a jury verdict in their favor in the amount of $4,600 against Noel B. and Winetta

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Sage, husband and wife, and Noel B. Sage, Jr., in a personal injury action arising out of a 1971 traffic accident. The Kokers' assignments of error concern the size of the verdict, rulings on evidence, conduct of counsel, jury instruction, jury misconduct and newly discovered evidence."

Resume: The opinion of the court goes on to say the evidence of the 1976 trial was in conflict, that the defense presented evidence to show complaints were nonexistent and much of the treatment not necessary.

Comment: The "conflict" of evidence is the result of a confused trial, malpractice of my own attorney, concert of actions, omissions and legal wrongs with the defense attorney, mental status attacks upon the plaintiff by defense attorney aided and abetted by my own attorney, withholding, suppressing, and

misrepresentation of material facts to the injuries, key questions not asked the treating doctor about the injuries, prejudicial viewing by the jury and discussion within the proceedings about evidence viewed but not presented. Misstatements, casting aspersions upon memory of witness and witnesses, insinuating questions, a doctor offering information that is deferred to direct examination, and ultimately never asked. Four untruths in concert of two attorneys to judges and jury, and one untruth by F. V. Betts alone.

All the proof from the record of these charages will be found in the COMPLAINT.

CP FILE #1 p 697 - Appeal #9346-1-I: AND
CP FILE #1 p 425 - Appeal #8935-8-I: (SAME)
Paragraphs 1.16 Through 1.84: Malpractice
Paragraphs 2.3 Through 2.58: Untruths - Both

Throughout the trial no protection for the client by objections and rebuttal and

controverting as is the duty of the plaintiff attorney.

Page 2 And 3:
Prior 1978 Appeal: The Appellate Court Says:

> "The Koker's next assignment of error concerns a deposition of Dr. Sata which had not been transcribed prior to trial. They contend that it is newly discovered evidence withheld by the defense which contradicts Dr. Sata's medical report and entitles them to a new trial."

Resume: The court says the deposition was taken August 20, 1975 and the trial was June 10, 1976 and that Mr. Betts, the Koker's counsel then was present at and participated in the deposition and "evidently chose not to transcribe it." The court says to be "newly discovered" the evidence must be discovered after trial. The court stated no evidence that the deposition not discovered until trial ended.

(Cont'd)
Page 2 and 3:
Comments:

The court viewed the appeal from what the attorney did and did not do. The attorneys knew there was a changed medical report in the deposition of a plaintiff doctor neurologist and both withheld the deposition, the changed medical report, and neither called the doctor to testify.

I was pro se on appeal for a new trial, and writing that it was newly discovered evidence, as it was to me. My attorney's duty became infidelity to the client, citizen, and court. I did not get a new trial even though the discovery was made after trial by myself.

Page 3:
Prior 1978 Appeal:
Conduct Of Defense Counsel: Quoting:

"The Kokers make several assignments of error concerning the conduct of defense counsel. They include: (1) extraction of promises from jurors

during voir dire and requests during final argument that they keep their promises to him:

> "I, and my clients take that as a serious solemn promise that is being called in, so to speak, at this time."

(2) the statement during closing argument that counsel thinks a defense expert witness is commendable and extremely thorough; (3) the testimony of this same defense expert witness describing Mrs. Koker as an appealing woman and the closing argument of defense counsel alluding to this testimony; (4) misstatement of testimony and casting aspersions on Mrs. Koker and her witnesses during trial final argument; (5) an objection by defense counsel which improperly implied that one of the Kokers' lay witnesses could not recall events 5 years ago (the witness

explained her difficulty as being due to how bad it made her feel to describe Mrs. Koker's injuries); and (6) numerous insinuating questions by defense counsel which implied that Mrs. Koker had a peculiar mental state."

Resume: The appellate court opinion goes on to say no objection was raised as to any of this conduct by the defense attorney. The objections at trial would have enabled the court to correct any improper conduct by instructing the jury to disregard it. That the appellate court will review matters not raised at trial only if the conduct is so flagrant that no action by the trial court could have removed its prejudicial impact.

Comments: F. V. Betts, the attorney for Beatrice Koker in that trial failed to object to any of this conduct at the trial, nor explain to the jury, nor cross-examine in redirect, nor protect his client from this

prejudicial implementation of tactics harmful. The conduct is not considered by the court to be so flagrant that objection from my own counsel would have corrected it by court ruling.

The fact of no protection from the only person there to protect me, and there for the purpose of protecting me in his superior position, is now an element of malpractice against that attorney in the case at bar.

Mr. LeMaster's attorney in the case at bar persists in misleading the court that his client should be released of liability for this "conduct." Mr. LeMaster is not charged with this conduct in the case at bar, because the issue is that my attorney could and should have prevented it and.or annulled it by objections.

It is significant to note the malpractice action in which this "conduct" is the responsibility of my own attorney - - SJ DENIED!!!

Page 4:

Prior 1978 Appeal: Quoting Appellate Court:

> "Next, the Kokers assign error to the admission of testimony about letters Mrs. Koker wrote to her doctor and the display of those letters before the jury without their being admitted into evidence. The letters were considered by Mrs. Koker's doctor before he drew his conclusions and thus were relevant." "Moreover, no objection was made at the trial, and the question may not be reviewed on appeal."

Resume: The court is saying they cannot consider the error of the "letters" in a prejudicial viewing by the jury, because there was no objection by plaintiff counsel, Mr. Betts. The court did not understand that Dr. Freidinger was to testify after reading the letters during the lunch hour. But that after prejudicial viewing for hours, the letters

disappeared from view of the jury and the jury was not informed as to why the doctor did not testify as promised to them just before the lunch hour. From my own knowledge and experience I say it was told to me by one of the jurors that they jury asked for those letters in deliberation. They never were put into evidence.

Comments: In the Complaint (supra) Paragraph 1.73: Quoting on this matter of prejudice and letters:

> "Proof of prejudice in plaintiff attorney Betts acts and omission is an opinion by the United States Supreme Court. Burgett v Texas 389 U.S. 109 (1967) Chief Justice Warren points to prejudice relating to letters. He says:
>
> > "Curiosity of the jurors may be aroused by unusual circumstances such as extended legal argument, hearings in the absence of the jury or the removal of evidence that consumed considerable time at trial."

9 RP pages argument. Hours prejudical viewing.

Page 4:
Prior 1978 Appeal:

Resume: The attorneys at the trial 1976 stipulated to the defense medical witnesses to be inserted out of order. The Court of Appeals found no merit in this error even though it caused great confusion in trial, because counsel for Beatrice Koker had agreed to it.

Comments: Beatrice Koker can understand the schedule of doctors preventing testimony at a set time. It is significant to note that Kenneth L. LeMaster refused to recognize this fact when he called a mistrial 1975 over the fact a doctor could not come at the defense attorney's commanded time. The Complaint CP FILE #1 p 697 - Appeal 9346-1-I: AND))SAME CP FILE #1 p 425 - Appeal 8935-8-I:) Paragraph 2.26/17-29: is a xeroxed copy of the doctor's note in the record, and the typed-out deciphered. This proves the doctor did not refuse to testify and would come later.

Page 4:

Prior 1978 Appeal: Quoting Appellate Court:

> "The Kokers next assign error to the admission into evidence of what they term "gibberish notes." These notes were a list of Mrs Koker's injuries which she prepared prior to her deposition."

Resume: The court is under the manifest mistaken opinion that the list was read to the jury to show those injuries she claimed at her deposition which were not being asserted at trial. They interrpreted the list as the defense wanted the jury to interrpret them, that an injured woman, middle-aged had difficulty sorting our real injuries from imaginary ones.

COMMENTS: The correct facts are that Mr. Betts asked me to make the list of symptoms and what I could do and not do, for him. The defense attorney made this list an "exhibit to

the deposition" and that was deliberately inflamed to the jury as Ex 20. The depositions are not allowed to go to the jury, thus the exhibit should not have been allowed to be given to the jury. This is a list of "phrases" and short reminders to myself to be discussed with my attorney as a work-product.

In trial, the jury was explained 25% of the list, and 75% went to them prejudicially viewed as a mental status attack on this plaintiff. At the deposition I said that no one would understand those notes except myself and was concerned when the defense attorney made them an exhibit. Mr Betts said not to worry, he would take care of it. He did not take care of it, and it is an element in the malpractice also.

I call attention of the United States Supreme Court to Justice Stone whose papers were given to a writer when he passed away.

Those papers included opinions of the United States Supreme Court with notes on the margins. My "jotted down notes" went to the court and were used prejudicially and exploited by the defense attorney LeMaster whose thrust in trial was to depict this honorable, truthful, trustworthy lady as someone senile, mentally incapacitated et al, and did so with aiding and abetting from my own attorney.

Page 4: Page 5:
Prior 1978 Appeal:

"The Kokers next assign error to the overall effect of the rulings of the trial court. The Kokers contend that they did not receive a fair trial, because the court was partial to the defense. We have examined the instances cited by the Kokers and have carefully reviewed the entire record. The Kokers re-

---

ceived a fair trial; the trial judge was not biased for or against either party." (Emphasis Mine)

Comments:

The "fair trial" the Kokers received refers to no bias for or against either party. Without truth there cannot be a fully and fairly heard trial in a meaningful manner.

Page 6:

Prior 1978 Appeal: Quoting Appellate Court:

"The Kokers next assign error to the use of exhibit No 1, Mrs. Koker's doctor's bill, which they contend was not given to the jury."

Resume: The exhibit itself was stamped "FILED" and "ENT'D" and the Court of Appeals concentrated on the index to Exhibits and did not find the Ex 1 listed as in evidence.

Comments: The Ex 1 is offered in the RP but is not entered. Transcript of trial

controls over docket entries. (Appeal And Error Wests Key 664 (1) The Court of Appeals considered only that the Exhibit was marked even though incorrectly.

THERE WAS ABUSE OF DISCRETION BY THE COURT BUT PLAINTIFF BEATRICE KOKER'S ATTORNEY IN 1976 TRIAL DID-NOT GIVE AN ADEQUATE OFFER OF PROOF, AND THE APPEAL WAS LOST

MALPRACTICE

Page 5: Page 6:

Prior 1978 Appeal: Quoting Appellate Court:

"The Kokers next assign error to the refusal of the trial court to allow a recently discovered lay witness to testify to the changes in Mrs. Koker's health and activity level after the accident. The trial court ruling was based upon the cumulative nature of the testimony.

Two other lay witnesses testified to the same changes."

Rejume': The court goes on to say a witness discovered shortly before trial may be allowed to testify unless the party calling the witness deliberately withholds the person's name. There is precedent that it might be abuse of discretion to refuse to allow somewhat sumulative testimony of a witness without giving the parties prior notice of a rule limiting witnesses. The court then referred to the inadequate offer of proof by my own attorney F. V. Betts.

Comments: Herein is another untruth to the court. I have since found carbon copies of letters written to F. V. Betts informing him of the "third lay witness" in 1975 and 1976 at least. It proves that the offer of proof is inadequate and false to a judge.

Please See: COMPLAINT CP FILE #1 p 697 - Paragraph 1.17 Through Paragraph 1.22:

This will prove that F. V. Betts received information about the third lay witness and what she knew and that it was different from the other "before and after" witnesses.

Paragraph 1.21: 1.22:

How then does one account for the offer of proof by F. V. Betts in the trial of 1976 and found to be inadequate by the Court of Appeals:?

Quoting Page 5: Page 6:
1978 Appellate Court
Opinion: (Supra)

This Is Mr. Betts Inadequate Offer of Proof

> "My offer of proof in this case would be that this lady is Mrs. Conley. The first time I ever talked to her, saw her, knew anything about her as to what she might say or had anything to do with it, was on the evening of the 9th. I went out to her home. I went out there the day before. She was in Aberdeen. She would testify that she knows the plaintiff, that she has visited her home, that she has seen the difference between her

present physicial condition and that which was apparent and which she knew about before the accident, and that she would further describe her differences in activity. That is generally the subject matter."

Comment: The third lay witness in affidavit shows Mr. Betts knew her and what she would have to say long before trial. See: APPENDIX A-35: A-36: in the case at bar.

Mr. Betts was not truthful about this witness to the judge. My injuries are subjective and lay witnesses are imperative.

The Court of Appeals in the prior appeal could not consider my offer of proof in detail for the first time on appeal. The appeal was lost. The malpractice action was deniedsummary judgment in Superior Court.

I found copies of the letters sent to Mr. Betts about this witness while writing the complaint in the case at bar in 1979 and incorporated the letters into the evidentiary complaint.

Page 6:

Prior 1978 Appeal: Quoting Appellate Court:

> "The Kokers' next assignment of error concerns the jury instruction on measurement of damages. The Koker's counsel did not object to the instructions, objection concerning jury instructions cannot be raised for the first time on appeal."

Comments: This concerns the Pattern Jury instruction 30.01. To change the pattern instruction to "admitted liability" as appropriate for the 1976 trial, there must be two phrases deleted. Both attorneys submitted the same instruction and did-not delete anything, thus offering an instruction in which the jury is to determine the liability.

The court of appeals found necessity for my own attorney's objection to his own instruction and without objection, no ruling on appeal.

Page 6:

Prior 1978 Appeal: Quoting Appellate Court:

> "The Kokers have moved to raise another issue on appeal concerning the failure to instruct the jury on damages for the aggravation of a dormant, preexisting condition. The instruction was initially proposed by the Kokers counsel, but abandned because he believed that there was no evidence to support it. This decision precludes raising the issue on appeal."

Comments: The Appellate Court knew from the record that several doctors testified to the aggravated preexisting condition, and also Dr.Sata who took the myelogram was never called to testify. His changed medical report was kept concealed from the other doctors IN COMING TO THEIR CONCLUSIONS and from the Judge, the jury and the clients. Mr. Betts

is responsible for this harm and lost damages. He is sued for malpractice in cause 1, and summary judgment was denied.

Page 6: Page 7:
Prior 1978 Appeal: Quoting Appellate Court:

> "The Kokers suggest another new issue in their reply brief. They contend that the jury was guilty of prejudicial misconduct by spending several hours debating Mrs. Koker's "guilt" or "innocence" despite Sage's admission of liability. Issue raised for the first time in the reply brief will not be considered on appeal."

Comments: The entire opening appeal on the prior "for new trial" appeal, was voicing "confusion of the jury." The reply brief held the affidavit of the jury foreman and specific reference that it was the PROOF of the confusion implemented in opening brief.

The jury foreman affidavit will be found as Exhibit I - COMPLAINT CP FILE #1 p 697 - APPEAL #9346-1-I: and CP FILE #1 p 425 - APPEAL #8935-8-I: QUOTING:

"Stephen M. Wood 7712 Dayton Avenue North, Seattle, Washington being first duly sworn on oath deposes and says:

That

I, stephen M. Wood, Foreman of the jury in the above mentioned case of Koker v Sage, relate by this affidavit there was a problem of confusion on the juror's part in deliberation, whether we were supposed to find the guilt or innocence of Mrs. Koker.

In jury deliberation of this case, it was a time consuming effort of approximately 2 hours for me to convince the jurors there was no guilt or innocence of Mrs. Koker involved but only the damages to be determined.

We, the jury, went through a voting process to establish the innocence of Mrs. Koker, and I, the jury foreman, explained no guilt of Mrs. Koker was involved. That the boy had admitted liability for the accident and was at fault."

/s/
Stephen M. Wood

C-31(a)

PRIOR APPEAL

The rulings of the court in the prior appeal pointed to tort. The tort began with the pleadings filed June 7, 1979, after trying unsuccessfully for three years to obtain a new trial.

The case at bar and two appeals is the result.

Comments: I am a witness as a victim of permanent injuries, wearing a leg brace for life, feeling the daily pain, enduring the physical and emotional and mental aftermath and anguish of a broken way of life. I am a victim and a witness to an unconstitutional trial 1976, and overpowered by deceit, untruths, obstruction of justice, concealment, meaningless appeals et al, et al. I live as the victim and witness of the subject matter of this case, anguished and tormented. Oppressed and rejected. Evaded and avoided seeking justice in the courts of our Land.

EXCERPTS - PRIOR APPEAL OPINION -1978
1976 Trial - Permanent Injuries Comments

C-31(b)

MANIFEST ERROR OF THE APPELLATE COURT RULINGS AND OPINION

The opinion of the court eliminates all errors, arguments, issues evading and avoiding proper weight of appeal. There is utter disregard for the lack of burden of proof, general denial, not keeping the summary judgment rule et al.

The court addresses CONSPIRACY in the opinions set forth for Def #1 Appendix A-9 and A-10: and for Def #2 APPENDIX B-9: All the authorities are with Def #1. The complaint in the case at bar has no lawful purpose. By law there is implied agreement, agreement from conduct, circumstantial evidence and all other. One attorney tells a lie to the judge and jury misrepresenting and suppressing material facts to injuries and plaintiff attorney knows of this fact and keeps silent when there is a duty to speak. The four untruths and Ex 2-3-4 of the Complaint (supra) present

jury questions. The authority used by the court is identical to the reply brief of Def-One, with about 3 exceptions. Those authorities do not address the issues in the case at bar. Not one of them holds deceit nor lies, nor suppression of fact material to injuries, nor lying to judges and juries. The court does not address these issues at bar, but glosses by as if they do not exist. Not relevant authority.

Please take judicial notice there is no discussion of the burden of proof of the moving party. The record indicates this petitioner presented affidavits in the opposition to ensure summary judgment denial. CP NUMERICAL ORDER APPENDIX A-37-38-39-40: #1 APPENDIX B-15-16-17-18: #2 Plaintiff made many affidavits in opposition to both defendants. The proof was from the record and there were no argumentative assertions or suspicions. FACT. PROOF. EVIDENCE. The moving party did not have adequate

affidavits - - general denials, no burden of proof for either defendant. It is the burden also upon the moving party to show there are no material facts, and they did not do so.

The record shows lies to the judges and jury and the defendants cannot deny what is proven from the record. There are affidavits Ex 2-3-4 of the Complaint (supra) of conspiratorial concert and the Court of Appeals Division I say all of these statements and events are consistent with a lawful purpose - - - Deceiving the court is obstruction of justice and treble damages by law. Agreements do not have to be written.

The court brings up the subject of a contingency fee. I have questioned why an attorney on a contingency fee would lie to a judge, and cover up lies of a defense attorney and all other events that brought for a denied summary judgment for malpractice.

The trial court and the appellate court are in manifest error in granting summary judgment and affirming on appeal that which is only for the trier of the fact. These state courts are adjudicating summary judgment!

The court next addresses misrepresentation, fraud and deceit. Appendix A-11: AND A-12: Def-One: Appendix B-9: B-10: #2 The court is deliberately bypassing constructive fraud, and the "various untrue statements" referred to are lies material to permanent injuries and in concert covered up, concealed by the plaintiff attorney at trial. Again the court is implying all these misdeeds are honest. The trial court did not hold that collateral estoppel applied to Def-Two. In fact the defense below was res judicata, and collateral estoppel comes as new on appeal. And so presented to that court. The trial court order says "no material facts." That is a manifest error also.

Intent and motive is only for the trier of the fact. There is obvious lack of consideration of 28 USCA Rule 56 and CR 56 by both defendants and the court.

This court opinion is relevant to the questions presented because it shows the severance with the Constitutional Rule 56.

The court states LeMaster's intent to misrepresent, deceit or commit a fraud on either Koker or HER COUNSEL was not presented. The court must have misunderstood or evaded and avoided the evidence that Def-Two (Le Master) and Def-One (Betts) knew of the misrepresentation and deceit and concealment of material facts to injuries, and committed in concert together so there is no possible way LeMaster could misrepresent to Betts. Untruths #1 #2 #3 #4: Complaint (Supra)

The court refers to conduct of Mr. Le Master which has no bearing on him in this case, because that conduct is the malpractice

against my own attorney for not objecting nor stopping the defense attorney. This conduct is the erroneous res judicata claim of Def-Two and does not apply. The court is in error for allowing to be misled. This conduct listed in old opinion of prior appeal in APPENDIX C-25; 25(a);

There is only one case in the opinion for Def #2 in APPENDIX B 9(a): LUCAS V VELIKENJE 2 Wash App 888, 471 P 2d 103 (1970). Therein is the case of Bordeaux v Ingersoll Rand Co., 71 Wn 2d 392, 429 P 2d 207 (1967). At page 396: Quoting:

> "Both doctrines require a large measure of identity as to parties issues and facts, and in neither can the party urging the two doctrines as a defense be a stranger to the prior proceeding. He must have been a party, a participant, or in privity with either, and the action out of which the bar is claimed must be qualitatively the same as the case in which the doctrine is set up as a bar, . . . "

Quoting Owens v Kuro 56 Wn 2d 564, 354 P 2d 696 (1960):

"A judgment is not res judicata nor is one collaterally estopped by judgment in a later case if there is no identity or privity of parties in the same antagonistic relation as in the decided action . . . An estoppel must be mutual and cannot apply for or against a stranger to a judgment since a stranger's rights cannot be determined in his absence from the controversy."

DENIED SUMMARY JUDGMENT
REVERSED ON APPEAL

The ruling of the appellate court is reversing a denied summary judgment on the flimsy premise the affidavit not sufficent and no material facts. Malpractice action includes a lie to a judge by Def #1 alone. CP FILE #1 p 697 - Para 1.17 Through 1.25: Appeal #9346-1-I: That is a material fact.

The "affidavit of lack of standard of care" is CP FILE #123 p 244 and is set forth in APPENDIX A-19 Through A-34:

Further evidence to lower court of lie to judge about a witness is the two affidavits from the witness set forth in the APPENDIX A-35: A-36: Also as Ex 9 & 10 in CP FILE #107 p 415:

The same appellate court that reversed a denied summary judgment with untruth to a judge and bad faith et al, reversed a granted summary judgment because an atty had not informed a client of settlement.

BLOOD V ANDERSON Appeal #9390-8-I Court of Appeals Division I.

[No. 9390–8–I. Division One. May 24, 1982.]

MARY ANN BLOOD, *Appellant*, v. GEORGE D. ANDERSON, ET AL, *Respondents*.

Appeal from a judgment of the Superior Court for King County, No. 865121, Frank J. Eberharter, J., entered September 24, 1980. *Reversed* and *remanded* by unpublished opinion per Williams, J., concurred in by Callow and Ringold, JJ.

This is not equal protection from the very same court, with one same judge on both panels, reversing a denied summary judgment in the case at bar.

This case before the bench is a civil conspiracy instead of criminal conspiracy the court is addressing. The gist of crime of conspiracy is agreement to commit unlawful act, while gist of tort is damage resulting from overt act or acts done pursuant to commont design. 7A Pacific Digest 2d 10, Wests Key 6:

OUTRAGE

The court uses the authority of Grimsby

in both opinions. APPENDIX A-12 and A-13: #1 APPENDIX B-10: #2

That case is superceded by the authority of ROUNDS V UNION BANKERS INS CO 22 Wash App 613, 590 P 2d 1286 (1979): (4) it says the nature of claim of outrage is such that trial court should have benefit of open court testimony before determining as a matter of law. Washington courts now even recognize a cause of action for emotional distress and recognitition of a person's right to peace of mind.

The appellate court does not mention the trial court's ruling on Cause IV, the outrage, is not properly pleaded.

The court makes much of quoting this plaintiff that "I don't see that these people want to go about doing harm deliberately." To quote something out of context distorts the meaning of the thought. RP "SUMMARY JUDGMENT" May 16, 1980 p 55/22-25:

p 56/1-3: Quoting Beatrice Koker:

> "And I think that people who are guilty of these wrongs, when they have been made to pay the redress and remedy maybe they will feel better, too. I don't see that these people WANT TO GO ABOUT doing harm deliberately, I think this is something that they did, (do deliberately) and maybe they regret it, I do not know. I know I regret that they did it because I live with it, every day." (Emphasis Mine)

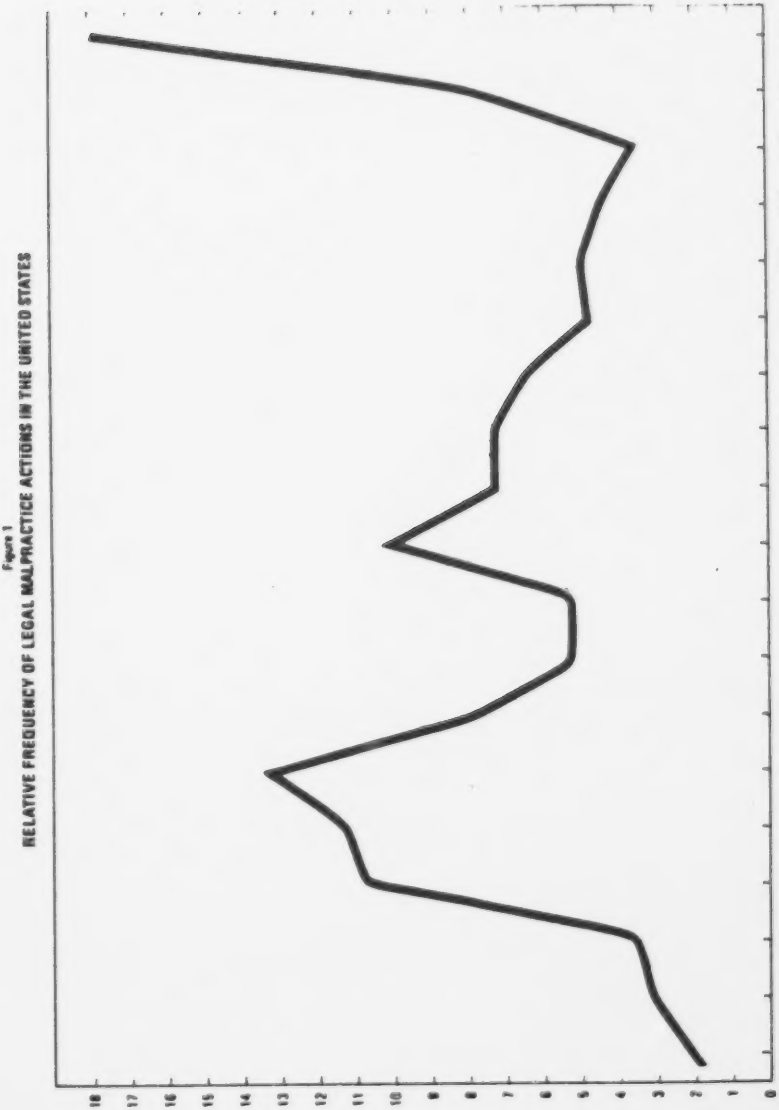
APPENDIX A-13: #1 (First Two Lines Are Answered)

The contents of the two opinions. The evading, avoiding, misunderstanding, shunning of the errors and issues on appeal, was so appalling to this petitioner that I could not accept that a judge wrote them.

The ruling was per curiam and had the opinion apprised the thrust of review, I would not have questioned it. As it was, I asked for the author of the opinions under RCW 42.17 Public Disclosure Act and was refused all the way to State Supreme Court.

LEGAL MALPRACTICE

Ronald E. Mallen
Victor B. Levit



RAP 13.4(b): (1) COURT OF APPEALS DIVISION I IN CONFLICT WITH STATE SUPREME COURT

BERNAL V AMERICAN HONDA 11 Wash App 903 527 P 2d 273 (1974) DIV I

This was a personal injury case. The plaintiff appealed summary judgment granted to the defendant in trial court. Court of Appeals Div I affirmed.

Washington State Supreme Court En Banc REVERSED: 87 Wn 2d 406, 553 P 2d 107 (1976) stating qualification of expert to be judged by trial court. That the trial court's exercise of its discretion in finding such competency of an affidavit will not be disturbed in the absence of a showing of abuse.

In the case at bar, the Court of Appeals Div I reversed a denied summary judgment on premise of standard of care affidavit as

being insufficient in their opinion, and without consideration nor mention of abuse of discretion by the lower court.

The "lack of standard of care affidavit" will be found in CP FILE #123 p 244 - Appeal 9346-1-I and also in EXCERPT in the APPENDIX A-19 Through A-34;

Be advised of a "conspiracy of silence" that necessitated a continuance. The Lawyer Referral advised me to leave the city to obtain the attorney affidavit. Finally it was obtained by an independent attorney not emotionally involved nor silent. Seattle.

The trial court denied summary judgment to malpractice, considering the "affidavit." The Court of Appeals Div I, reversed a denied summary judgment based upon the affidavit of standard of case which they deemed insufficient, yet there was no abuse of discretion. Used as an excuse to evade.

RAP 13.4(b): 1. COURT OF APPEALS DIVISION I IN CONFLICT WITH STATE SUPREME COURT

HELLING V CAREY 83 Wn 2d 514, 519 P 2d 981 (1974):

There is a verdict for defendant in an action for medical malpractice, affirmed by Court of Appeals. 8 Wn App 1005: STATE RUPREME COURT REVERSED. 83 Wn 2d 514, 519 P 2d 981 (1974):

In this case the medical experts gave testimony of undisputed standard of care. Supreme Court found issue to be whether defendant's compliance with standard of care should insulate them from liability under facts plaintiff lost substantial vision due to failure of Def to timely give pressure test for glaucoma.

In the case at bar, there are lies to the judges and jury and obvious disregard of standard of care of an attorney and other specific examples. COMPLAINT CP FILE #1 p 697: Paragraph 1.16 Through 1.84: CP FILE #123 p 244: APPEAL 9346-1-I

RAP 13.4(b): 2. DECISION OF COURT OF APPEALS IN CONFLICT WITH DECISION OF ANOTHER COURT OF APPEALS

FELSMAN V KESSLER 2 Wash App 493, 469 P 2d 691 (1970): Division I Court of Appeals in Conflict With Division III

This authority is wrongful death. Summary judgment was awarded defendant. Plaintiff appealed. DIVISION III COURT OF APPEALS REVERSED AND REMANDED: P 496 and 497 saying conspiracy elements and factual knowledge within exception, and opposing party shall be allowed opportunity to disprove by cross-examination and by the demeanor of moving party.

Beatrice Koker, plaintiff in case at bar filed evidentiary, verified complaint and correlated Memorandum In Opposition to SJ the entire Complaint. The proof is in the record and the motive and intent reasons are particularly within the knowledge of the moving parties. My trial denied.

Motive and intent are material facts particularly within the knowledge of the moving parties for summary judgments - Def-One Betts and Def-Two LeMaster. It is advisable that the cause proceed to trial in order that Beatrice Koker may be allowed penetrate such facts by cross-examination, witnesses, testimony and by the demeanor of the moving parties while testifying. United States v Logan Co. 147 F Supp 330, (W.D. Pa 1957): Subin v Goldsmith 224 F 2d 753 (2d Cir., 1955): Hudesman v Foley 73 Wn 2d 880, 441 P 2d 532: (1968): Balise v Underwood 62 Wn 2d 195, 381 P 2d 966 (1963):

Elements of a conspiracy and factual knowledge of the defendants belong to the trier of the fact.

> "Fairness of procedure is due process in the primary sense." Fitzgerald v Hampton (1972) 467 F 2d 755, 152 US D.C. Appl, 93 S Ct 549, 408 US 1055, 34 L ed 2d 509:

RAP 13.4(b): 2. DECISION OF COURT OF APPEALS IN CONFLICT WITH ANOTHER DIVISION OF COURT OF APPEALS

IN ESTATE OF WAHL: 31 Wash App 815 (1982) Superior court granted summary judgment and beneficiaries appeal. Court of Appeals Div III REVERSED AND REMANDED. Quoting (1)

> "Summary judgment is improper where, even though evidentiary facts are not in dispute different inferences may be drawn therefrom as to ultimate facts, such as intent or knowledge." PRESTON V DUNCAN 55 Wn 2d 678, 681, 349 P 2d 605, (1960): SANDERS V DAY 2 Wash App 393, 398, 399, 468 P 2d 452 (1970)

In the case at bar the superior court, the Court of Appeals and the State Supreme Court ignored and evaded facts, proof, evidence, inferences, presumptions, and the 28 USCA Rule 56 and State Cr 56 - Summary Judgment.

In addition the case at bar for both defendants is bad faith from beginning to end and should not have been granted summary judgment and affirmed on appeal and denied review in the State Supreme Court.

C-46

PETITION FOR REVIEW STATE SUPREME COURT CONFLICT CASES 1. COURT OF APPEALS IN CONFLICT WITH STATE SUPREME COURT

GEISE V LEE 10 Wash App 728, 519 P 2d 1005 (1974): DIV I 84 Wn 2d 866, 529 P 2d 1054 (1975):

In this cited case a patient sought damages from an ophthalmologist for failure to inform her of abnormalities indicating a risk of glaucoma and for failure to administer additional tests.

The Superior Court for King County entered judgment on verdict in favor of the defendants. The Court of Appeals affirmed saying the defendants' conduct met standard of care. The Washington State Supreme Court reversed and remanded for new trial holding that informed consent doctrine required disclosure of physical abnormalities and that the standard of reasonable prudence applied under the circumstances.

CASES BELIEVED TO SUSTAIN JURISDICTION OF THE UNITED STATES SUPREME COURT
(Geise v Lee)

SIGNIFICANT PREJUDICE-
BIAS DIVISION I CONFLICT
RULINGS

Olympic Fish Products v Lloyd 23 Wash App 499, 597 P 2d 436 (1979): Div I 93 Wn 2d 596, 611 P 2d 737 (1980):

A fish processor sought damages from a corporate officer for the officer's interference and with the corporation's obligation to sell fish to the processor. The Superior Court entered summary judgment in favor of the officer. The Court of Appeals (Div I) held genuine issue of material fact existed as to the intent of the officer and reversed summary judgment. The State Supreme Court held that the liability of officer depends on presence or absence of good faith and a question of fact exists as to such test and affirmed and remanded case for trial. THE SAME COURTS FOR THE CASE AT BAR EVADED SUCH A TEST!

SUMMARY JUDGMENT

State Of Washington
CR 56

LAMON V McDONNELL DOUGLAS CORP

An airline stewardess sought damages from an aircraft manufacturer for injuries suffered in a fall through an open escape hatch. Superior Court granted summary judgment to defendant. The court of appeals in nonunanimous decision reversed the summary judgment at 19 Wn App 515 and remanded for trial. The Supreme Court of the state held the record discloses material fact, and affirmed the Court of Appeals.

The failure to challenge the sufficiency of an affidavit prior to a trial court ruling on a motion for summary judgment waives any deficiency in the affidavit.

Likened to the case at bar, there was never any motion to strike the affidavit nor any portion thereof. Deficiency is thus waived without such a motion.

CASES BELIEVED TO SUSTAIN JURISDICTION
OF THE UNITED STATES SUPREME COURT
(Lamon v McDonnell et al)

C-49

MORE CASES BELIEVED TO
SUSTAIN JURISDICTION OF
UNITED STATES SUPREME
COURT

In MORRIS V McNICOL 83 Wn 2d 491, 419 P 2d 7 (1974): is an action for damages. Plaintiff appeals from summary judgment in favor of defendants. Supreme Court of the State Of Washington reversed and remanded stating the reasonableness of a party's acts is a question of fact and granting summary judgment improper.

Was there anything reasonable about the acts of Def-One and Def-Two in the instant case with proof of untruth and deceit et al from the record? Why then discrimination of granting summary judgment to two defendants in concert of wrongful acts together? The defendants did not present evidence, and did not meet the burden of proof and in entirely obvious manner evaded, avoided and escaped. All this affirmed on appeal, plus reversing a denied summary judgment in added prejudice and bias. This case set forth _____

SUMMARY JUDGMENT

BUNZEL v AM. ACADEMY OF ORTHOPAEDIC SURGEONS 165 Cal Prtr 433 (1980)
107 Cal App 3d 165 Headnotes: 1. 2. 3.

An orthopaedic surgeon brought action against society of orthopaedic surgeons for damages and for an order admitting him to membership. Summary judgment entered in favor of society and the orthopaedic surgeon appealed. The Court of Appeals held that issue whether society wielded monopoly power and professional concerns so as to clothe it with a public interest, requiring it to exercise fiduciary responsibility with respect to acceptance or rejection of membership applications was for the trier of the fact to determine. Reversed.

Summary judgment is a drastic measure which deprives the losing party of trial on merits. Doubts should be resolved in favor of party opposing motion. Affidavits of non-moving party are liberally construed.

CASES BELIEVED TO SUSTAIN JURISDICTION OF THE UNITED STATES SUPREME COURT
(Bunzel v Am Academy Of Orthopaedic -- ")

C-51

SUMMARY JUDGMENT

MURPHY V ALLSTATE INS CO Headnotes: (1)(5)
147 Cal Rptr 565 (1978) 83 Cal App 3d 38:

Insureds brought suit against the insurer, asserting five causes of action for graud, conspiracy to defraud, bad faith and intentional infliction of emotional distress. Superior Court entered summary judgment for insurer, and insured appealed. Reversed. None of the insured's alleged causes of action were actions on the policy of insurance.

The party moving for summary judgment has burden of proof. If the moving party's showing is insufficient, adverse party is-not required to demonstrate the validity of his claims or defenses or even to file counterdeclarations or counteraffidavits. Wests Ann Code Civ Proc §437c. It is not the function of a motion for summary judgment to test sufficiency of the pleadings.

SUMMARY JUDGMENT

GRAVES V P.J. TAGGARES CO 94 Wn 2d 298, 616 P 2d 1223 (1980): Headnotes (1)(2)(3):

The Superior Court refused to vacate a summary judgment in favor of the plaintiff as to liability and ultimate judgment awarding damages. The Court of Appeals reversed the refusal to vacate at 25 Wn App 118 and remanded for a trial on issue of damages. The Supreme Court of the State held that entry of summary judgment was error, and that the surrender of rights as to liability as well as a jury trial were not binding. The court affirms the Court of Appeals action in vacating the judgment, but remandes for a trial on all issues except those determined by valid stipulations.

A party moving for summary judgment must show undisputed facts entitle him to summary judgment. Whether relationship between superior and subordinate is one of

of agency is question of law only if the facts are undisputed and subject to only one interpretation.

An attorney has no authority to surrender a substantial right of his client unless specific authorization has been granted by the client. The rights to trial by jury and to contest an issue upon which liability turns or the amount of a damage award are substantial rights for the purpose of this rule.

In the instant case, there is proof of an aggravation of pre-existing condition. To some degree already in the transcript of the trial. But the predominant proof is withheld from the jury by deliberately not calling the medical doctor who performed the myelogram. The deposition by this doctor also held proof, but the doctor was not called to testify and the deposition was-not transcribed. Complaint (supra) Para 1.76:

SUMMARY JUDGMENT

BERNARD V VIDRINE 365 SO 2d 525 (1976)

(Third Cir) Headnotes: (1)(2)(3):

Widow whose husband was killed in small plane he piloted which collided with another small plane, brought suit. Summary judgment was granted dismissing the air service which maintained and rented the plane that collided with plaintiff's husband's plane. Widow appealed. The Court of Appeals held summary judgment precluded by existence of unresolved issue of fact. Reversed and remanded.

Burden of proof rests on party who moves for summary judgment and all doubts are resolved against him. Summary judgment is-not intended to be used as vehicle to circumvent trial of genuine issues even if it appears to the court there is little chance of success at trial. Use of summary judgment to deny "day in court" applied with caution in interest of fairness, due process.

Cases Believed To Sustain Jurisdiction
(Bernard v Vidrine)

C-52(b)

SUMMARY JUDGMENT

FREIDMAN V MEYERS (CA NY 1973) (2nd Cir) 482 F 2d 435:

Real estate syndicate investor brought action against promoters and managers of syndicate for alleged fraudulent diversion and misappropriation of funds by defendants. A judgment was entered summarily dismissing a complaint and plaintiff appealed. The Court of Appeals, held, inter alia that defendants failed to establish their burden of showing that there was no genuine issue with respect to the material facts including absence of fraudulent intent on their part and plaintiff's knowledge of facts allegedly concealed which would render the suit time barred precluding summary judgment. Reversed.

Summary judgment is particularly not-appropriate where it is sought on basis of inferences which parties seek to have drawn.

Cases Believed To Sustain Jurisdiction
(Freidman v Meyers)

C.53

SUMMARY JUDGMENT

SHERWOOD V MOXEE SCHOOL DIST

363 P 2d 138 (1961) 58 Wn 2d 351: (1)(2)

In this cited case, the State Supreme Court of Washington followed the accepted rule of the United States Supreme Court in Conley v Gibson 335 US 41, 45, 2 L Ed 2d 80, 78 S Ct 99: Reversed the dismissal for failure to state claim.

In Conley v Gibson (supra) The United States Supreme Court, in simple unmistakable terms, stated the test to be applied in passing upon this motion as follows:

> ". . . In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. . ."

Headnote 1: No longer is it necessary for plaintiff to plead the facts "constituting cause of action." (Beatrice K. Proved Facts.)

SUMMARY JUDGMENT

HALPERN V LAVINE et al 60 NYS 2d 121 (1946)

The wife of an insured had been a beneficiary under insurance policy for about 15 years. The unexplained change of beneficiary from wife to niece and cousins made two weeks before the death of the insured would seem to require scrutiny.

Summary judgment granted in favor of defendants and plaintiff wife appeals. The remedy of summary judgment is essentially one of interest of justice. Under the circumstances of this case, substantial justice requires a trial and full disclosure of facts. Judgment and order reversed and motion for summary judgment denied.

The case at bar granted summary judgment which is misapprehended, misused, misappropriated and abused. The result is injustice and denial of a right.

SUMMARY JUDGMENT

WITTLIN V GIACALONE 154 F 2d 20 (1946):

This action for specific performance of a contract for the sale of certain realty. Defendant appeals from order granting summary judgment to plaintiffs. Reversed and remanded with directions. (1)(2)(3)(4):

One who moves for summary judgment has burden of proof. The courts are critical of papers presented by moving party but not of the opposing papers. Where motion for summary judgment was signed only by counsel and not in affidavit form, motion not properly to be weighed as to its factual statements in determining summary judgment.

Neither defendant in case at bar kept burden of proof. Motion not in affidavit form. Skimpy presentation. Skeleton record. Beatrice Koker controverted, and fought for her right to trial against power.

Cases Believed To Sustain Jurisdiction
(Wittlin v Giacalone)

C-55(a)

TITSWORTH V MONDO 467 NYS 2d 793 (1978)
95 Misc 2d 233, a client brought legal malpractice against an attorney who had represented him in a personal injury action. The attorney filed motion for summary judgment, client cross-moved. The summary judgment denied. Whether lawyer's conduct constituted malpractice is question of fact. Set forth

In case at bar the Superior Court Judge denied summary judgment to legal malpractice, and the Court of Appeals Div I reversed it improperly. Joint tortfeasors were divided on 3/4 of the case, and all other contrary to law, fact, evidence and rule, but the one part of the case properly ruled is then overturned on appeal with affirmance on the granted summary judgment, thus sweeping the entire "hot potato case" under the legal rug, so to speak. The lawyers conduct in the case at bar is a question of fact and ignored.

HONEYMAN V HANAN, EXECUTOR 271 NY 564, 3. NE 2d 186 (1937) Judgment vacated.

To constitute jurisdiction over an appeal from a state court, it must appear, affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause. Whether this requirement has been met is itself a federal question.

Denial of a right to trial in the case at bar, intercepted with granting summary judgment to all defendants to 3/4 of the case, is a record of a federal question.

The case at bar could not be decided without ruling on the federal question of denial of a trial fully and fairly heard in a meaningful manner. State Courts ruled sub silento, evading and avoiding.

CONSPIRACY ET AL

In the authority of COLLINS V HARDYMAN 183 F 2d 308 (1950), a conspiracy by private individuals not acting under color of state law, may be of such magnitude and effect as to work deprivation of equal protection of laws, equal privileges and immunities. This case applies to all defendants in case at bar. Complaint Cause II Untruths #1 #2 #3 #4 Paragraph 2.3 Through Paragraph 2.58:

Wrongful use of the judicial system by the defendants in the King County Superior Court, as quasi-judicial members of the court, interefered with my fourteenth amendment rights under 42 USCA §1985--(2)(3): In TAYLOR V GILMARTIN 686 F 2d 1346 (1982) 10th Cir), an adult plaintiff sued religious deprogrammers under Civil Rights Act and at common law. The District Court granted summary judgment for the defendants and the plaintiff appealed and won a new trial to jury under 28 USCA §1985(2)(3): Set Forth

SUMMARY JUDGMENT

TAYLOR V GILMARTIN (Supra)

Conspiracy: Amendment 14 §5:

There was a separate concurrence of Justice Clark, joined by Black and Fortas, which stated: Page 1359: p 1362:

> "The Court carves out of its opinion the question of the power of Congress, under §5 of the Fourteenth amendment, to enact legislation implementing the equal Protection Clause or any other provision of the Fourteenth Amendment.... There now can be no doubt that the specific language of §5 empowers the Congress to enact laws punishing all conspiracies--with or without state action--that interfere with fourteen- the amendment rights."

Judgment on the claims in this cited case under §1985 (2)(3) are reversed as to all defendants. The case shall be remanded for further proceedings, a new trial to a jury, in accordance with the foregoing."

Cases Believed To Sustain Jurisdiction
(Taylor v Gilmartin)

C-58(a)

CIVIL RIGHTS
PRIVATE CONSPIRACIES

In GRIFFIN V BRECKENRIDGE 410 F 2d 817 (1969), negro people were attacked, then threatened with murder, clubbed and inflicted with serious physical injury. The Federal District Court dismissed the complaint for failure to state a cause of action. The Plaintiffs appealed.

On appeal to the 5th Circuit, it was decided 42 USCA §1985(3) was not applicable to reach private conspiracies to interefere with 14th Amendment rights. Affirmed.

On certiorari, the United States Supreme Court REVERSED and remanded the case. It was the unanimous view of the highest court of the land that 42 USCA §1985(3) is intended to reach private conspiracies. GRIFFIN V BRECKENRIDGE 403 US 88, 102, 91 S Ct 1790, 1798, 29 L Ed 2d 338 (1971): Set Forth

"STATE ACTION"

ARTICLE III CONSTITUTION OF THE UNITED STATES
§1 Note 121 p 12:

"Policy of federal courts is to decide cases on basis of substantial rights rather than technicalities." Hines v Wainwright,(C. A. Fla 1976) 539 F 2d 433:

CONSTITUTION OF THE UNITED STATES
AMENDMENT 14 Citizens Of United States
Note 20 p 59

"Judicial action in private disputes is a form of state action required for application of this clause prohibiting state from abridging the privileges and immunities of citizens." Hosey v Club Van Cortlandt 299 F Supp (1969) D.C.N.Y. Appeal: 28 USCA 1257(3):

CASES BELIEVED TO SUSTAIN JURISDICTION OF THE UNITED STATES SUPREME COURT

Constitutional And Statutory Provisions

ARTICLE III CONSTITUTION OF THE UNITED STATES §2, Cl. 1, Note 17 p 76:

"United States Supreme Court must take notice on its own motion where jurisdiction does not appear." Butler v Dexter, Tx 1976, 96 S Ct 1527, 425 U.S. 262, 47 L Ed 2d 774:

"This amendment governs any action of a state whether through its legislature, through its courts, or through its executive or administrative officers." Voight v Webb D. C. Wash (1942)

CONSTITUTION OF THE UNITED STATES AMENDMENT 14

Procedural due process is opportunity to be heard at a meaningful time andin a meaningful manner. Parkham v Cortese 407 U.S. 67, 32 L Ed 2d 556, 34 L Ed 2d 165:

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28 USC §1257: (2)(3)

§ 1257. State courts; appeal; certiorari

"Final judgments or decrees rendered by the highest court of the State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the

validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

28 USCS §1257, n 99

Decision based on nonfederal grounds

"Where state court decided against plaintiff in error on federal questions, Supreme Court would hear case on its merits, although the state court's decision was based on a ground involving no federal question." Railroad Co V Maryland (1875) 87 US 643, 22 L Ed 446:

"Language used by highest state court in its opinion is not conclusive upon question whether decree is maintain-

Note 99:

able on some independent non-Federal ground; real substance and effect of decision will be inquired into and determined." McCullough v Virginia (1898) 172 US 102, 43 L Ed 382, 19 S Ct 134:

"Where state court decided against plaintiff in error on federal question, Supreme Court would hear case on its merits, although the state court's decision was based on a ground involving no federal question." Railroad Co v Maryland (1975) 87 US 643, 22 L Ed 446: (Supra)

28 USCS §1257, Note 97:

Decision not made in terms of federal question

"Where state court did not, in terms, pass up claim distinctly made there, that statutes of state under which proceedings were had were in derogation of rights and privileges secured to appellant by Constitution of United

Note 97:

States, but final judgment of that court necessarily involved adjudication of that claim, Federal Supreme Court has jurisdiction to review case." Chicago Life Ins Co v Needles (1885) 113 US 574, 28 L Ed 1084, 5 S Ct 681:

"Decision in terms of Federal question is not essential; if decision of Federal question was necessarily involved in judgment rendered, it is not matter of importance that state court avoided all reference to question." Chapman v Goodnow's Admr (1887) 123 US 540, 31 L Ed 235, 8 S ct 211: Bell's G. R. Co v Pennsylvania (1890) 134 US 232, 33 L Ed 892, 10 S Ct 533: Chicago B & Q R. CO v Chicago (1897) 166 US 226, 41 L Ed 979, 17 S Ct 581:

"Where it appears from record, by clear and necessary intendment, that

Note 99:

Federal question was directly involved so that state court could not have given judgment without deciding it, Supreme Court has appellate jurisdiction." Sayward v Denny (1895) 158 US 180, 39 L Ed 941, 15 S Ct 777:

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28 USCA §1257 Note 74:
Separability of questions

"Of course, there might be cases where, although the decision put forward other reasons, it would be apparent that a federal question was involved, whether mentioned or not. It may be imagined, for the sake of argument, that it might appear that a state court, even if ostensively deciding the federal question in favor of the plaintiff in error, really must have been against him upon it, and was seeking to evade the jurisdiction of this court.

Note 74: USCA:

If the ground of decision did not appear and that which did not involve a federal question was so palpably unfounded that it could not be presumed to have been entertained, it may be that this court would take jurisdiction." Johnson v Risk, Tenn 1890 11 S Ct 111, 137 US 300, 307, 34 L Ed 683." Leathe v Thomas, Ill 1907, 28 S ct 30, 207 U.S. 93, 52 L Ed 118.

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28 USCA §1257 Note 61:
Necessity of federal question

"The Supreme Court has no jurisdiction to review a state court decision unless it appears affirmatively from from the record not only that a federal question was presented for decision to highest court of state having jurisdiction, but that its decision of federal question was

Note 61: USCA:

necessary to determination of the cause, that federal question was actually decided, or that judgment was rendered could not have been given without deciding it." Southwestern Bell Telephone co v Oklahoma, Okl 1938, 58 S Ct 528, 303 U.S. 206, 82 L Ed 751. See, also, People of State of New York ex rel Consolidated Water Co. of Utica v Maltbie, N. Y. 1938, 58 S Ct 506, 303 U. S. 158, 82 L Ed 724.

28 USCA §1257 Note 99:
Procedural questions

"A state may choose the procedure it deems appropriate for the vindication of federal rights, but where state court of last resort closes the door to any consideration of a claim of a federal right, it is not simply a question of state procedure." Young v

Note 99 USCA:

Ragen, Ill 1949, 69 S Ct 1073, 337 U. S. 235, 93 L Ed 1333:

28 USCA §70

Fictitious or frivolous questions---Generally

"The court acts only on the judgment, and only such questions as either have been or ought to have been passed on by the state court in the regular course of its proceedings can be considered." Fashmacht v Frank, La 1874, 90 US 416, 23 Wall 416, 23 L Ed 81.

"A motion to dismiss a writ of error on the ground that no federal question is involved must be denied where the protection of the U.S.C.A. Const. Amend 14 is invoked in the answer, and the defense is at least plausible on its face." American Sugar-Refining Co v State of Louisiana, La. 1900,

Note 70: USCA:

21 S. Ct 43, 179 U.S. 89, 45 L Ed 102:

28 USCA §1257 Note 103:
Pleadings

"Whether a pleading sets us a sufficient right of action or defense, grounded on Constitution or a law of the United States, is necessarily a question of federal law, and, where a case coming from a state court presents that question, United States Supreme Court must determine for itselt sufficiency of allegations displaying right or defense, and it is not concluded by view taken of them by state court." Allied Stores of Ohio, Inc. v Bowers, Ohio 1959, 70 S Ct 437, 358 U.S. 522, 3 L Ed 480:

28 USCA §1257 Note 403:
Denial of federal rights

"In reviewing a case in which federal constitutional rights are asserted,

United States Supreme Court must inquire not merely whether those rights have been denied in express terms but also whether they have been denied in substance and effect, and must review independently both legal issues and those factual matters with which they are comingled." Oyama v State of Cal., Cal 1948, 68 S Ct 269, 332 U.S. 633, 92 L Ed 249:

HISTORICAL AND REVISION NOTES

"The revised section applies in both civil and criminal cases. In Twitchell v Philadelphia, 1868, 7 Wall, 321, 19 L Ed 223, it was expressly held that the provisions of section 25 of the Judiciary Act of 1789, 1 Stat. 85, on which Title 28 U.S.C., 1940 ed., section 344, is based, applied to criminal cases, - -."

42 U.S.C.A. §1985 (2)(3): CIVIL RIGHTS

Conspiracy to interfere with Civil Rights

Obstructing justice; intimidating party, witness, or juror

(2) "If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror;

or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the

of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby

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another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators." R.S. §1980.

The complaint of the instant case shows the impeding, hindering, obstructing, defeating the due course of justice. What the two defendants did can only be intentional because repetition of untruth is not accidental.

The superior position of attorneys, especially the calibre of the defendants is also a factor by law.

Grievous harm and deprivation and damages resulted from the acts, omissions and legal wrongs from defendants in case at bar.

Constitutional And Statutory Provisions
42 USCA §1985 (2)(3)

C-67

"Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if

the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued." R.S. §1981.

The defense attorney in the trial of 1976 is untruthful to judge and jury and the attorney for the plaintiff remained silent when there was a duty to speak having knowledge the wrong was being committed and having the power to prevent and

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Constitutional And Statutory Provisions
42 USCA §1986 C-68 (a)

neglected or refused to do so in conspiracy withholding and suppressing and misrepresenting material facts to injuries to the jury in two untruths and tactics of delay in two other untruths. Plus other.

42 USCA §1983: CIVIL RIGHTS

Civil action for deprivation of rights

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." R.S. §1979; Pub L 96-170, §1, Dec 29, 1979, 93 Stat 1284:

Note 39 p 34

Extreme Nature Of Rule

"Summary judgment is lethal weapon and courts must be mindful of its aims and targets and beware of overkill in its use." Brunswick Corp v Vineberg C.A. Fla 1967, 370 F 2d 605:

"Summary judgment remedy is extreme and not to be used as a substitute for trial, and any doubt as to existence of triable issue of material fact must be resolved against movant." Jacobson v Maryland Cas Co., C.A. Mo 1964, 336 F 2d 72, certiorari denied 85 S Ct 655, 379 U.S. 964, 13 L Ed 2d 558. See also Smoot v Chicago, R. I & P.R. Co., C.A. Okl 1967, 378 F 2d 879:

C.F.W. Const. Co V Travelers Ins. Co C.A. Tenn, 1966, 363 F 2d 557: Thompson v U. S., C.A. Kan. 1961, 291 F 2d 67: Bruce Const. Corp v U.S. for Use of Westinghouse Elec. Supply Co., C.A. Fla., 1957, 242 F 2d 873: Homan Mfg. Co v Long, C.A. ILL, 1957, 242 F 2d 645:

Note 42 p 35: Cautious, Limited Or Sparing Application Of Rule

"Summary judgment must be used sparingly since its prophylactic function, when exercised, cuts off a party's right to present its case to the jury." Egelston v State University College at Geneseo, C.A.N.Y. 1976, 535 F 2d 752:

"Availability of relief under this rule is limited." Klinge v Lutheran Charities Ass'n of St. Louis, C.A. Mo. 1975, 523 F 2d 56:

Note 42 p 35:

"Summary judgment should be applied with caution." International Ass'n of Machinists and Aerospace Workers, Dist No 8, AFL-CIO V J. L. Clark Co., C.A. Ill. 1972, 471 F 2d 694:

"Summary judgment is to be granted cautiously in order to preserve substantive rights, nevertheless, it is entirely proper where, after following proper procedures, no genuine issue of material fact remains." Exxon Corp. v National Foodline Corp., Cust & Pat. App 1978, 579 F 2d 1244:

28 USCA - RULE 56:

Note 44 p 36:
Discretion Of Court

"Court must be certain that it is not depriving party of fundamental right to trial before granting summary

Note 44 p 36:

judgment." Johnson Foils, Inc. v v Huyck Corp., D.C.N.Y. 1973, 61 F.R.D. 405:

"To avoid violation of constitutional guarantee of trial by jury, summary judgment cannot be granted if there is any doubt as to the existence of genuine issue of fact." Elliott v Elliott, D.C.N.Y. 1970, 49 F.R.D. 283:

"Discretion plays no real role in grant of summary judgment, and exercise of sound discretion applies only in denying summary judgment in appropriate circumstances." Turner V McWhirter Material Handling Co., D.C. Ga, 1964, 35 F.R.D. 560:

28 USCA - RULE 56: Note 219 p 83:
Number Of Material Facts

"Existence of one genuine issue of material fact is sufficient to preclude

summary judgment." No Oilport! v Carter, D.C. Wash. 1981, 520 F Supp 334:

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28 USCA - RULE 56: Note 482 p 145:
Failure Of Moving Party's Proof

"If nonmoving party has raised by pleadings a genuine issue of material fact, and evidentiary matter in support of motion for summary judgment does not establish absence of such issue, summary judgment must be denied even though no opposing evidentiary matter is presented." McWhirter Distributing Co., Inc v Texaco, Inc Em. App 1981, 668 F 2d 511:

"Where party moving for summary judgment does not show, on basis of admissible evidence adduced from persons with personal knowledge of facts, that

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there is no genuine issue as to any material fact, summary judgment will be denied, even though party opposing motion has submitted no probative evidence to support its position or to establish that there is genuine issue for trial; however, if moving party does carry its preliminary burden, then opposing party may not defeat motion by relying on contentions in its pleading, but must produce significant probative evidence to support its position." U.S. v Pent-R-Books, Inc., C.A.N.Y. 1976 538 F 2d 519, certiorari denied 97 S Ct 1175, 430 U.S. 906, 51 L ed 2d 582:

Amendment V. Due Process Of Law

* * * nor be deprived of life, liberty, or property, without due process of law; * * *

CONSTITUTION - AMENDMENT 5

DUE PROCESS OF LAW

Note 12: Nature Of Due Process

"Due process, to be effective, must be accorded at meaningful time and in meaningful manner." Royal Typewriter Co. v N.L.R.H., C.A.S. 1976, 533 F 2d 1030:

"Due process procedures required by this amendment vary with nature of case and the more serious the deprivation, the more extensive the procedural safeguards which must precede its imposition." Saville v Treadway D.C. Tenn. 1974, 404 F Supp 430:

Note 14: Fair Play:

"Fair play is the essence of "due process." Galvan v Press, Cal 1954, 74 S Ct 737, 347 U.S. 522, 98 L Ed 911, rehearing denied 75 S Ct 17, 348 U.S. 852, 99 L Ed 671. See, also, Garvey v Freeman, C.A. Colo. 1968, 397 F 2d 600: Cox v Burke, C.A. Wis. 1966, 361 F 2d 183, certiorari denied, 87 S Ct 304, 385 US 939, 17 L Ed 2d 218: U.S. ex rel Mishkin v Thomas, D.C.N.Y. 1968, 282 F Supp 729: U.S. v American Honda Motor Co., D.C. Ill 1967, 273 F Supp 810:

"Due process is denied where the procedure tends to shock the sense of fair play." Howard v U.S. C.A. Cal. 1967, 372 F 2d 294, certiorari denied 87 S Ct 2129, 388 U.S. 915, 18 L Ed 2d 1356:

Note 13: Elements Of Due Process - Generally:

"Fundamental requirement of due process is opportunity to be heard at meaningful time and in meaningful manner." Mathews v Eldridge, Va 1976,96 S Ct 893, 424 U.S. 319, 47 L Ed 2d 18:

"Due process is not technical concept with fixed content unrelated to the place and circumstances; rather, it is flexible and calls for such procedureal protections as particular situation demands." Id.

Note 25:

"Due process of law" means the law of the land, which implies a general public law, equally binding upon every member of the community, which embraces all persons who are in, or who may come into, like situations

and circumstances, and not partial laws affecting rights of classes of individuals, and when applied to special or class legislation, it means in addition that classification must be natural and reasonable."
U.S. V Ballard, D.C. Ky 1935, 12 F Supp 321:

"Due process of law" and "law of the land" are substantially identical."
Yarborough v North Carolina Park Commission, 1928, 145 S.E. 563, 196 N.C. 284:

Note 40: Vested Rights Protected - Generally:

"One may not be deprived of his day in court under a given statute because of the failure of Congress to specifically provide it, since such a right is fundamental."
Collins v Biron, D.C. Ala., 1944, 56 F Supp 357:

Note 424: Suppression:

"Prosecution's suppression, concealment, or failure to disclose evidence it has discovered which is useful to defense constitutes denial of due process of law." U.S. V Wolfson, D.C. Del 1971, 322 F. Supp 798:

Note 11: "Liberty, Definition Of"

"The term "liberty" within this amendment is not confined to mere freedom from bodily restraint, but it extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective." Bolling v Sharpe App. D.C. 1954, 74 S Ct 693, 347 U.S. 497, 98 L Ed 1083:

CONSTITUTION

AMENDMENT VII - CIVIL TRIALS

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

CONSTITUTION OF THE UNITED STATES - 1787

PREAMBLE

"We the people of the United States in order to form a more perfect Union, establish justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the

United States of America."

"Mere adherence to letter without reference to spirit and purpose of Constitution may mislead." Packer Co iv Keokuk (1877) 95 U.S. 80, 24 L ed 377:

CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Sec.

1. Citizens of United States; states prohibited from abridging privileges or immunities of citizens of the United States, or depriving any person of due process of law or equal protection of the laws.

2. Apportionment of representatives.

3. Disqualification as officers or or electors of persons who have engaged in insurrection or rebellion; removal of disability.

AMENDMENT XIV:

4. Validity of public debt; debts for payment of pensions or bounties in suppressing insurrection; payment of obligations incurred in aid of insurrection or claims for emancipation of slaves.

5. Legislation for enforcement of article.

Note 118: Substantive Nature Of Due Process

"Due process of law concerns itself with substance and not form." Lane v N. L. R. B., C.A. 10 1951, 180 F 2d 671, certiorari denied 72 S Ct 26, 342 U.S. 813, 96 L Ed 614:

Note 102:

"Due process of law" means procedure according to rules and principles for enforcement and protection of private rights." Gray v Hall, 1928

Note 187: Professional Or Trade Associations

"Termination of membership in private association organized to maintain standards in a profession or calling does not present question under this clause." Parsons College v North Central Ass'n of Colleges And Secondary Schools, D.C. Ill, 1967, 271 F Supp 65:

"Where "state action" was involved because of dental society's official function of selecting nominees for vacancies on state board of dental examiners and loss of benefits of membership in district dental society would deprive dentist of substantial rights, dentist had standing to challenge division of dental society code of ethics requiring submission of speeches and articles for approval prior to

publication." Firestone v First Dist. Dental Soc., 1969, 299 N.Y.S. 2d 551, 59 Mis 2d 362:

Note 187:

"Where state dental society functioned as agent of state in selection of members of state board of dental examiners and board of dental examiners was creature of the state, the activities of the dental society constituted "state action." Id.

Note 30: Civil Rights Act:

"Only where asserted civil right stems from this amendment and claim is for damages resulting from abridgment of privileges or immunities or denial of equal protection of laws is federal remedy denied against persons not acting under color of state law." Paynes v Lee, 377 F 2d 61:

CONSTITUTION OF THE STATE OF WASHINGTON

ART. 4, §2: p 335-336:

"Under 28 USC §1257, restricting United States Supreme Court's review of state decisions to judgments rendered "by the highest court of a state in which a decision could be had," judgment rendered by Department One of Supreme Court of Washington is reviewable in United States Supreme Court, where rehearing en banc before Washington Supreme Court is not granted as matter of right, Washington Constitution and Statutes authorize its supreme court to sit in two Departments, each of which is empowered to hear and determine causes on all questions arising therein, cases coming before court may be assigned to Department or to court en banc at discretion of Chief Justice and specified number of

other members of the court, and decision of Department becomes final judgment of Washington Supreme Court unless within specified time petition for hearing has been filed or rehearing has been ordered on court's own initiative."
Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers v Lucas Flour Co. (1962) 360 US 95, 7 L Ed 2d 593, 82 S Ct 571:

CONSTITUTION OF WASHINGTON Trial by Jury: DECLARATION OF RIGHTS ART.1, §21:

"The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for verdict by nine or more jurors in civil cases in any court of record, and for waiving of jury in civil cases where the consent

of the parties interested is given thereto."

"Right to trial by jury is carefully protected by constitution and laws and must be guarded by courts."
Gatudy v Acme Constr. Co (1938) 196 Wn 562, 83 P 2d 889:

CONSTITUTION OF THE STATE OF WASHINGTON
ART. 1, §3
4. What Constitutes Due Process Of Law

"Specific procedural safeguards to be afforded under due process protections are determined by the purpose of the hearing involved."
State v Scheffel (1973) 82 Wn 2d 872, 514 P 2d 1052:

"A full due process hearing must provide an individual with the opportunity to confront witnesses, to present evidence and oral argument, and to be represented by

counsel." Flory v Department of Motor Vehicles (1974) 84 Wn 2d 568, 527 P 2d 1318:

Art. 1, §3 Note 25: Civil Proceedings -- In General

"A judgment entered without valid personal jurisdiction over defendant violates due process." Schell v Tri-State Irrigation (1979) 22 Wn App 788, 591 P 2d 1222:

Note 36:

"Fair trial consists not alone in observation of naked forms of law, but in recognition and just application of its principles." State v Suleski (1965) 67 W D 2d 45, 406 P 2d 613:

Art. 1, §32: Fundamental Principles

"A frequent recurrence to fundamental principles is essential to the

security of individual right and the perpetuity of free government."

STATE BAR ACT
CHAPTER 2.48
AGENCY OF STATE

2.48.230 Code of ethics.

"The code of ethics of the American Bar Association shall be the standard of ethics for members of the bar of this state."

2.48.010 Objects And Powers

"There is hereby created as an agency of the state, for the purpose and with the powers hereinafter set forth, an association to be known as the Washington State Bar Association, hereinafter designated as the state bar, which association shall have a common seal and may sue and be sued, and which may, for the

purpose of carrying into effect and promoting the objects of said association, enter into contracts and acquire, hold, encumber and dispose of such real and personal property as is necessary thereto. Short title: "This act may be known as the State Bar Act." (1933 c94 §1.)

2.48.160 Suspension for nonpayment of fees

"Any member failing to pay any fees after the same become due, and after two months' written notice of his delinquency, must be suspended from membership in the state bar, but may be reinstated upon payment of accrued fees and such penalties as may be imposed by the board of governors, not exceeding double the amount of the delinquent fee."

State ex rel Schwab v State Bar Assoc (1972) 80 Wn 2d 266, 493 P 2d 1237:

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SUPREME COURT OF THE UNITED STATES

No. A-734

BEATRICE E. KOKER,

Appellant,

V

FREDERICK V BETTS, ET AL

ORDER

UPON CONSIDERATION of the application of the appellant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including May 6, 1983.

/S/ William H. Rehnquist
Associate Justice of the Supreme Court of the United States

Dated this 8th day of March, 1983.

C-84

PUBLIC DISCLOSURE

RCW 42.17.260 (2)(a)

WASHINGTON STATE

(2) "Each agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973."

(a) "Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases."

"Any enactment, from whatever source originating, to which a State gives the force of law is a statute of the State, within the meaning of the clause cited related to the Jurisdiction of this court." Williams v Bruffy 96 U.S. 594, 603, 24 L Ed 1018: Hamilton v Regents of Univ Of Calif 293 U.S. 245,257,258, 55 S Ct 197, 79 L Ed 343:

CERTIFICATE OF SERVICE

I, Beatrice E. Koker, Petitioner, hereby do certify that I made personal service of 3 copies (three) each of the petition and Appendix A, Appendix B, Appendix C, on May 2, 1983. AFFIDAVIT OF SERVICE RULE 28 SENT CERTIFIED EXPRESS MAIL TO THE UNITED STATES SUPREME COURT ON MAY 2, 1983.

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Pro Se

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